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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 187

JOEL A. MALOY AND RUTH MALOY, His Wife,
Petitioners,

v.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WEST PALM BEACH, A Corporation Existing Under The Laws Of The United States Of America,
Respondent

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Second District

MEMORANDUM OF RESPONDENT IN OPPOSITION

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MEMORANDUM OF RESPONDENT IN OPPOSITION

This Petition should be denied; it is an incredible prolongation of a cavil over $21.29 raised and rejected in a foreclosure proceeding under an amortizing home mortgage filed in a state court and decided under state law. It does not touch a Federal question.

STATEMENT

The complaint for foreclosure was filed by Respondent on August 15, 1957 in the State trial court, the Circuit Court of Palm Beach County. It alleged that there had been default in payments on the mortgage note since May 1, 1957 and that property taxes for 1956 finally due in June, 1957 had not been paid as provided by the mortgage; a copy of the mortgage containing a copy of the mortgage note was attached to the complaint. The answer contained the affirmative defense that the balance due on the mortgage note as of May 1, 1957 as reported to Petitioners by Respondent was erroneous and excessive in the amount of $21.29 because the balance reflected an alleged improper method of calculation under the note and mortgage and that, until this alleged error in the amount of $21.29 was cleared up to their satisfaction, the Petitioners were excused from their admitted failure to make monthly installment payments on the mortgage note. Petitioners also admitted failure to pay the taxes and assigned as reasons therefor an increase in taxes in 1956 over 1955.

On cross motions for summary final decree, the trial court found the Petitioners to be in default for their admitted failure to pay installments on the note after May 1, 1957 and for failure to pay the 1956 property taxes.

The trial court then proceeded to examine the evidence on the disputed $21.29 and found that the method of calculation employed by Respondent corresponded with the mortgage note. It further found that there was no miscalculation included in the balance due May 1, 1957.

The trial court ordered a foreclosure sale 21 days from the date of its findings and order unless Petitioners paid the sums found by the trial court to be due and owing.

The Federal Constitutional Issue Was Not Raised Below

Ever since, the Petitioners have set out in countless papers filed with the courts in Florida their lengthy version of the calculations which would eliminate the disputed $21.29. But at no place in the trial court proceedings was there even a mention or a suggestion of a Federal constitutional question. Not until Petitioners filed a motion for rehearing in the District Court of Appeals was any reference made to the Constitution of the United States. At that point, for the first time, the contention was advanced that Federal due process had somehow been violated by the trial court's consideration of the account card:

> "That as a matter of fact, it is apparent that respondent attempted to prove petitioners in default for their failure to pay installments due on a paper respondent refers to as its ACCOUNT CARD.
>
> * * *
>
> "That as a matter of fact, it is apparent in the record on appeal that your petitioners not having been alleged and proved or found and held in default as required by law, the holding of the Court is, as stated and argued in petitioners' Assignments of Error and Briefs, *although not a specific Assignment of Error*, contrary to and a denial of the provisions of our State and Federal Constitutions, guaranteeing to every citizen trial by Due Process of the law." (Emphasis added) Motion for Rehearing, District Court of Appeals, page 6.

Such a tardy assertion of a Federal constitutional claim was inadequate under Florida law. See *Hanson v. Denckla*, 357 U.S. 235, 243-244 (1958). Moreover, even if this claim be considered a substantial one, none of the Florida courts considered or passed upon it; nor was it necessarily involved in their disposition of the case. This Court, therefore, is without jurisdiction to consider Petitioners' belated Federal claim.

No Cognizable Federal Claim Has Been Asserted

Petitioners now argue that the state trial court "departed from the accepted and usual course of judicial proceedings" in that the court considered the account card in determining whether there had been a default under the mortgage. Even assuming that such action by the court was inconsistent with Florida law, as alleged, no Federal question of substance is present so as to give this Court jurisdiction to review the case. This Court has no power to consider state court rulings which are said to be inconsistent with state law or procedure. Jurisdiction to consider rulings which have allegedly "departed from the accepted and usual course of judicial proceedings" is limited to rulings of lower Federal courts. See Rule 19(1)(b) of this Court's Rules. A state court's failure to follow state law has never been deemed to raise a Federal constitutional issue so as to give this Court jurisdiction on certiorari.

The Petitioners Were Not Denied Federal Due Process of Law

Here the Petitioners were in default on their mortgage for reasons that they admitted in their pleadings. Even if the trial court had ignored the account card, it would have been compelled to find them in default and to order the foreclosure sale.

The complaint that the Petitioners bring to this Court is that because the trial court did not grant their own Motion for Summary Final Decree and because they were not proved in default or determined in default with the correct words and language under their interpretation of State law, they have been denied Federal due process of law. To state their complaint here is to answer it.

CONCLUSION

The Petition should be denied. It does not raise a Federal question. It is frivolous in the extreme.

Respectfully submitted,

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